

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

* * *

JACOBY DERAIL HUBBARD,

Case No. 3:20-cv-00088-MMD-CLB

Plaintiff,

ORDER

v.

HOWELL, *et al.*,

Defendants.

This action began with a *pro se* civil rights complaint filed pursuant to 42 U.S.C. § 1983 by Plaintiff Jacoby Derail Hubbard, a former state prisoner. On February 19, 2020, this Court issued an order denying Plaintiff's incomplete application to proceed *in forma pauperis* for prisoners and directed Plaintiff to file a fully complete application within 45 days from the date of the order. (ECF No. 6 at 2.) On February 21, 2020, Plaintiff filed a notice of change of address, advising the Court that he had been paroled. (ECF No. 10.) As such, on March 10, 2020, the Court ordered Plaintiff to file a fully complete application to proceed *in forma pauperis* for non-prisoners or pay the full \$400 filing fee within 30 days from the date of that order. (ECF No. 11.) The 30-day period has now expired, and Plaintiff has not filed an application to proceed *in forma pauperis* for non-prisoners, paid the full \$400 filing fee, or otherwise responded to the Court's order.

District courts have the inherent power to control their dockets and “[i]n the exercise of that power, they may impose sanctions including, where appropriate . . . dismissal” of a case. *Thompson v. Hous. Auth. of City of Los Angeles*, 782 F.2d 829, 831 (9th Cir. 1986). A court may dismiss an action, with prejudice, based on a party’s failure to prosecute an action, failure to obey a court order, or failure to comply with local rules. See *Ghazali v. Moran*, 46 F.3d 52, 53–54 (9th Cir. 1995) (affirming dismissal for noncompliance with local rule); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1260–61 (9th Cir.

1 1992) (affirming dismissal for failure to comply with an order requiring amendment of
2 complaint); *Carey v. King*, 856 F.2d 1439, 1440–41 (9th Cir. 1988) (affirming dismissal
3 for failure to comply with local rule requiring *pro se* plaintiffs to keep court apprised of
4 address); *Malone v. U.S. Postal Serv.*, 833 F.2d 128, 130 (9th Cir. 1987) (affirming
5 dismissal for failure to comply with court order); *Henderson v. Duncan*, 779 F.2d 1421,
6 1424 (9th Cir. 1986) (affirming dismissal for lack of prosecution and failure to comply with
7 local rules).

8 In determining whether to dismiss an action for lack of prosecution, failure to obey
9 a court order, or failure to comply with local rules, the court must consider several factors:
10 (1) the public's interest in expeditious resolution of litigation; (2) the court's need to
11 manage its docket; (3) the risk of prejudice to the defendants; (4) the public policy favoring
12 disposition of cases on their merits; and (5) the availability of less drastic alternatives.
13 See *Thompson*, 782 F.2d at 831; *Henderson*, 779 F.2d at 1423–24; *Malone*, 833 F.2d at
14 130; *Ferdik*, 963 F.2d at 1260–61; *Ghazali*, 46 F.3d at 53.

15 Here, the Court finds that the first two factors weigh in favor of dismissal. The third
16 factor, risk of prejudice to Defendants, also weighs in favor of dismissal since a
17 presumption of injury arises from the occurrence of unreasonable delay in filing a pleading
18 ordered by the court or prosecuting an action. See *Anderson v. Air West*, 542 F.2d 522,
19 524 (9th Cir. 1976). The fourth factor, public policy favoring disposition of cases on their
20 merits, is greatly outweighed by the factors in favor of dismissal discussed herein. Finally,
21 a court's warning to a party that his failure to obey the court's order will result in dismissal
22 satisfies the "consideration of alternatives" requirement. *Ferdik*, 963 F.2d at 1262;
23 *Malone*, 833 F.2d at 132–33; *Henderson*, 779 F.2d at 1424. The Court's order requiring
24 Plaintiff to file an application to proceed *in forma pauperis* for non-prisoners or pay the full
25 \$400 filing fee within 30 days expressly stated: "IT IS FURTHER ORDERED that if Plaintiff
26 does not timely comply with this order, dismissal of this action may result." (ECF No. 11
27 at 2.) Thus, Plaintiff had adequate warning that dismissal would result from his
28 noncompliance with the Court's order to file an application to proceed *in forma pauperis*
for non-prisoners or pay the full \$400 filing fee within 30 days.

1 It is therefore ordered that this action is dismissed without prejudice based on
2 Plaintiff's failure to file an application to proceed *in forma pauperis* for non-prisoners or
3 pay the full \$400 filing fee in compliance with this Court's March 10, 2020 order.

4 It is further ordered that the Clerk of the Court enter judgment accordingly and
5 close this case.

6 DATED THIS 16th day of April 2020.



MIRANDA M. DU
CHIEF UNITED STATES DISTRICT JUDGE